

**STATUS:** Effective

**POLICY NUMBER:** Waste-0076-NPD

**SUBJECT:** State Cleanup Program Guide

**AUTHORIZED:** Brian C. Rockensuess, Commissioner

**SUPERSEDES:** WASTE-00600-NPD

**ISSUING OFFICE:** Office of Land Quality, Remediation Services Branch

**ORIGINALLY EFFECTIVE:** December 9, 2022

**RENEWED OR REVISED:** Not applicable

**Disclaimer:** This nonrule policy document (NPD) is being established by the Indiana Department of Environmental Management (IDEM) consistent with its authority under [IC 13-14-1-11.5](#). It is intended solely to provide guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and if it conflicts with these rules or laws, the rules or laws shall control. Pursuant to [IC 13-14-1-11.5](#), this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate State Environmental Board and may be put into effect by IDEM 30 days afterward. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM also will submit the policy to the Indiana Register for publication.

## 1.0 PURPOSE

This nonrule policy document (NPD) provides information about administrative processes involved in the investigation, remedy selection, and closure of hazardous substances and petroleum sites in the State Cleanup Program of the Office of Land Quality (OLQ) Remediation Services Branch. It serves as a supplement to the Risk-based Closure Guide (WASTE-0046-R2).

## 2.0 SCOPE

This NPD applies to the OLQ State Cleanup Program.

## 3.0 SUMMARY

Indiana Department of Environmental Management created the State Cleanup Program in 1989 to manage the investigation and remediation of hazardous substances and petroleum sites which are not included in the federal Superfund Program. This NPD provides an overview of the process from when hazardous substances and petroleum sites are referred to the State Cleanup Program for closure. This NPD provides information regarding:

- 3.1. Introduction to the purpose and scope of the State Cleanup Program
- 3.2. Rules and laws
- 3.3. Process overview
- 3.4. How a site enters the program
- 3.5. Public involvement
- 3.6. Investigations
- 3.7. Remedy decisions
- 3.8. Remedial actions
- 3.9. Closure
- 3.10. When issues arise
- 3.11. Cost recovery
- 3.12. Document and electronic data file submittal guidelines
- 3.13. Forms and checklists

## 4.0 DEFINITIONS

- 4.1. "Agency" – The Indiana Department of Environmental Management (IDEM).
- 4.2. "Agreed Order (AO)" – A written negotiated settlement and determination of liability under [IC 13-25-4](#) and/or [IC 13-24](#) entered into with a responsible party that sets forth the removal and/or remedial obligations at a particular site.
- 4.3. "Analytical data" – Analytical results, and quality assurance and quality control documentation provided by an analytical laboratory.
- 4.4. "Approval" – Written or vocal concurrence from the Indiana Department of Environmental Management.
- 4.5. "Attorney General (AG)" – The elected official representing the state and IDEM in litigation and the various

Deputy AGs (DAGs) assigned to obtain civil enforcement of IDEM Agreed Orders or Commissioner's Orders in court.

4.6. "Clean-up operation 29 CFR 1910.120(3)" – An operation where hazardous substances are removed, contained, incinerated, neutralized, destabilized, cleared-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

4.7. "Closure" – IDEM's written recognition that a party has demonstrated attainment of remediation objectives in an area.

4.8. "Code of Federal Regulations (CFR)" – A codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

4.9. "Commissioner's Order" – An administrative order issued by the Commissioner to determine liability under [IC 13-25-4-8](#) and compel a responsible person to undertake a removal or remedial action with respect to a release or threatened release of a hazardous substance from a facility or site in Indiana" pursuant to [IC 13-25-4-9\(a\)\(1\)](#) and [IC 13-25-4-9\(b\)](#).

4.10. "Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)" – 1980 Legislation that established the Federal Superfund for response to uncontrolled releases of hazardous substances to the environment. The act is also known as Superfund.

4.11. "Cost recovery" – Action taken by the Indiana Department of Environmental Management (IDEM) to collect from the responsible party the past and future costs incurred in response to actions taken to mitigate and/or remediate the release of threat of contaminants into the environment.

4.12. "Data" – A collection of facts from which conclusions may be drawn. (Data can be alpha, numeric, or both.)

4.13. "Days" – Calendar days including weekends and holidays.

4.14. "Delineation" – The act of determining the extents of a chemical release.

4.15. "Document" – (1) Electronic or printed text that records a public or stakeholder request for an agency action, an agency action taken, staff deliberation, or supporting information regarding such a request or action. (2) A tangible item subject to public disclosure under [IC 5-14-3](#). (3) A compilation of information that describes, defines, specifies, reports, certifies, requires, or provides data or results pertaining to environmental programs.

4.16. "Emergency" – A situation that poses an imminent threat to life and/or property or a situation of an emergency nature.

4.17. "Environment" – The complex of physical, chemical, and biologic factors that include land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other similar natural resources, as defined in [IC 13-11-2-137](#), that act upon an organism or ecological community.

4.18. "Environmental Restrictive Covenant (ERC)" – Any deed restriction, restrictive covenant, environmental covenant, environmental notice, or other restriction or obligation with respect to the land, as defined in [IC 13-11-2-193.5](#), that:

(1) Is executed before July 1, 2009, and:

- (A) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment;
- (B) by its terms is intended to run with the land and be binding on successors;
- (C) is recorded with the county recorder's office in the county in which the land is located; and
- (D) explains how it can be modified or terminated; or

(2) Is executed after June 30, 2009, and:

- (A) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment;
- (B) by its terms is intended to run with the land and be binding on successors;
- (C) is recorded with the county recorder's office in the county in which the land is located;
- (D) explains how it can be modified or terminated;
- (E) grants the department access to the land;
- (F) requires notice to a transferee of:
  - (i) the land; or
  - (ii) an interest in the land;
- of the existence of the restrictive covenant; and
- (G) identifies the means by which the environmental files at the department that apply to the land can be located.

4.19. "Environmental restrictive ordinance", as defined in [IC 13-11-2-71.2](#), means any ordinance with respect to land, that:

- (1) is adopted by a municipal corporation (as defined in [IC 36-1-2-10](#)); and
- (2) seeks to control the use of groundwater in a manner and to a degree that protects human health and the environment against unacceptable exposure to a release of hazardous substances or petroleum, or both.

4.20. "Gate keeper site investigation (SI) team" – A team of SI staff that evaluate the gate keeper list sites and determine if the sites will continue through the SI process.

4.21. "Groundwater" – Has the meaning set forth in [IC 25-39-2-10](#).

- 4.22. "Hazardous substance" – any substance referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601(14)), including, but not limited to, any substance designated at 40 CFR Part 302.4. See also [IC 13-11-2-98](#).
- 4.23. "Hazardous waste" – Hazardous waste as defined in 40 CFR 261 subpart B.
- 4.24. "Indiana Code (IC)" – The codification of laws enacted by the Indiana General Assembly that is maintained by the Indiana Legislative Council.
- 4.25. "Indiana Department of Environmental Management (IDEM)" – An agency of Indiana State Government whose mission is to implement federal and state regulations to protect human health and the environment while allowing the environmentally sound operations of industrial, agricultural, commercial, and government activities vital to a prosperous economy.
- 4.26. "Institutional controls" – Administratively or legally enforceable measures that limit human exposure to release-related chemicals that exceed unconditional remediation objectives.
- 4.27. "Invoice" – A bill requesting payment from customers to the agency for financial obligations.
- 4.28. "Legal Counsel" – Attorneys within the Office Legal Counsel assigned to assist agency staff with legal matters.
- 4.29. "National Priorities List (NPL)" – Under the Superfund Program, the list of releases and potential releases of hazardous substances, pollutants, and contaminants that appear to pose the greatest threat to public health, welfare, and the environment.
- 4.30. "No further action (NFA) letter" – A letter issued to responsible parties for the remediation of hazardous substances and/or petroleum products on a state cleanup site that states the remediation was conducted to Risk-based Closure Guide (R2) criteria for closure.
- 4.31. "Non-aqueous phase liquid (NAPL)" – A NAPL is one of two types: (1) DNAPL (dense non-aqueous phase liquid) has a specific gravity greater than water; or (2) LNAPL (light non-aqueous phase liquid) with a specific gravity less than water.
- 4.32. "Nonrule policy" – The term assigned by the Indiana Department of Environmental Management (IDEM) to those policies identified in [IC 13-14-1-11.5](#) as any policy that:
- A. Interprets, supplements, or implements a statute or rule;
  - B. Has not been adopted in compliance with [IC 4-22-2](#);
  - C. Is not intended by IDEM to have the effect of law; and
  - D. Does not apply solely to the internal IDEM organization (is not an Administrative Policy).
- 4.33. "Notice" – Announcements to the public about pending and completed actions and/or decisions of the agency.
- 4.34. "Person" – As defined in [IC 13-11-2-158](#), is a legal entity and includes, but is not limited to, an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.
- 4.35. "Plan" – A document describing how a task is to be performed or implemented e.g., sampling plan.
- 4.36. "Procedure" – A specified set of guidelines detailing how to perform an activity.
- 4.37. "Project manager/lead inspector" – (1) An employee or representative of the Indiana Department of Environmental Management who has been tasked with conducting/coordinating site related activities. This individual is seen as the director over the site activities and manager of other staff brought on-site to conduct specific portions of the site work. (2) A person who coordinates, oversees, and makes technical recommendations with regard to work that includes the collection, use, or reporting of environmental data. For the purposes of Indiana Department of Environmental Management (IDEM), the work may involve activities such as permitting, monitoring, investigation, or remediation.
- 4.38. "Public record" – Any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with the agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data or any other material, regardless of form or characteristics (See [IC 5-14-3-2\(r\)](#)). A public record may include e-mail, attachments to e-mail, Outlook calendar, telephone records, and other electronic records.
- 4.39. "Published level" – A concentration published by IDEM for a chemical in a particular medium which is acceptable for a particular exposure scenario.
- 4.40. "Quality assurance project plan (QAPP)" – A document describing in comprehensive detail the necessary quality assurance, quality control, and other technical activities to ensure that the results of the work performed will satisfy the stated performance criteria. Quality assurance project plans (QAPPs) apply to data gathering activities associated with projects and lab procedures. QAPPs are commonly needed for laboratory operations, remediation projects, and mitigation projects. QAPPs may contain one or more standard operating procedures. A QAPP is valid for a period up to five years from the official publication date (approval date).
- 4.41. "Release" – Has the applicable meaning set forth in [IC 13-11-2-184](#).
- 4.42. "Release-related chemical" – A substance placed on the land or in the subsurface which is, by virtue of its nature or quantity, subject to regulation by IDEM's Office of Land Quality. The term also includes regulated breakdown products.

- 4.43. "Remediation objective" – Per [IC 13-25-5-8.5\(c\)](#), either: (1) a concentration of a substance equal to the naturally occurring concentration of that substance on the site; or (2) an environmental concentration of a substance which, given the conditions, uses, and restrictions prevailing on the site; is protective of human health and the environment. For the purposes of this document, a remediation objective may be a conditional or an unconditional remediation objective.
- 4.44. "Remediation work plan" – Document submitted for a State Cleanup Section project that provides a comprehensive summary of site conditions and the remedy proposed to remediate a site.
- 4.45. "Remedy" – A means of reducing risk arising from a release-related chemical. Remedies either reduce the concentration of a release-related chemical, reduce exposure to that chemical, or both. An adequate remedy will, either by itself or in concert with one or more other remedies, reduce risk from release-related chemicals to an acceptable level.
- 4.46. "Responsible party" – The individual, company, group, or other entity legally responsible for areas where chemicals of concern are known to have been released, or legally responsible for compliance under state or federal environmental regulations. Includes responsible persons (CERCLA and [IC 13-25-4](#)); owners and operators ([IC 13-23-13](#)); owners, operators, and responsible persons ([IC 13-24-1](#)).
- 4.47. "Rule" – The whole or any part of an agency statement of general applicability that: (1) has or is designed to have the effect of law; and (2) implements, interprets, or prescribes: (A) law or policy; or (B) the organization, procedure, or practice requirements of an agency.
- 4.48. "Safe Drinking Water Act (SDWA)" – The Act originally passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply. The law was amended in 1986 and 1996 and requires many actions to protect drinking water and its sources, such as rivers, lakes, reservoirs, springs, and ground water wells.
- 4.49. "Send" – Communicate, either electronically or in hard copy.
- 4.50. "Site" – (1) The geographical area where environmental chemical of concern evaluation is desired. The site may consist of an entire facility and surrounding property or a single area of concern within a facility or property, depending upon the applicable regulatory program. (2) For the purposes of [IC 13-25-5](#), site means a parcel of real property for which an application has been submitted under [IC 13-25-5-2](#). (3) The geographical area being inspected. The site may consist of an entire facility or a single area of concern within the facility or property.
- 4.51. "Source area" – Where release-related chemicals are present in one phase at concentrations high enough to enable them to readily transfer to a different phase at concentrations which require a remedy.
- 4.52. "Unconditional remediation objective" – A remediation objective which permits unrestricted use of a property. Examples include IDEM's published levels for residential exposure scenarios, naturally occurring background levels, or project-specific residential levels.
- 4.53. "U.S. Environmental Protection Agency (U.S. EPA)" – An agency of the federal government charged with protecting human health and with safeguarding the natural environment: air, water, and land.
- 4.54. "Virtual File Cabinet" – The agency's electronic document management repository. This repository has all the functionality necessary to capture, store, file, index, redact, reassemble, and securely access electronic documents of all types both received by and created by the various programs within the agency and allows the public viewing, searching, and printing capabilities.
- 4.55. "Work plan" – (1) A site-specific document that includes project description, project objective, site history, and rationale for sampling locations, chemical analysis request, quality assurance, quality control, and may include the Health and Safety Plan. The work plan format may vary programmatically, and may also be referred to by any other names such as Quality Assurance Project Plan (QAPP), Sampling and Analysis Plan, etc. (2) A document that includes project description, project objective, responsibilities, performance measurements, and priorities for the project.

## 5.0 ROLES

- 5.1. The consultant (when engaged by the responsible party) shall:
- A. Represent the responsible party.
  - B. Prepare workplans or other documents for a site on behalf of a responsible party.
  - C. Coordinate activities with the IDEM State Cleanup Section project manager to achieve closure of a site.
  - D. Submit plans, data, and documents as requested by the State Cleanup Section project manager.
  - E. Perform investigatory and/or remediation work as described in the work plans or other documents.
- 5.2. The IDEM attorney shall:
- A. Draft and/or review legal documents, other project related documents, and correspondence, as needed.
  - B. Advise IDEM OLQ project managers and IDEM management.
  - C. Refer cases to the Indiana Attorney General, when necessary.
- 5.3. The IDEM Remediation Services Branch Chief shall:
- A. Approve many documents such as letters to, and agreements with, responsible parties and participants.
  - B. Assist State Cleanup Section chief in the resolution of issues that arise relative to a site, as needed.

5.4. The IDEM Science Services Branch staff shall:

- A. Provide expertise and services to the State Cleanup Section project managers in the fields of, but not limited to, chemistry, geology, geological information systems, engineering, and risk assessment.
- B. Review work plans and reports.
- C. Perform field oversight of investigation or remediation activities, as needed.
- D. Provide sampling expertise.
- E. Evaluate the quality of the environmental data.
- F. Develop and maintain electronic databases.
- G. Participate in meetings and discussions with responsible parties, consultants, or the public, as needed.

5.5. The IDEM State Cleanup Section Chief shall:

- A. Supervise program staff (IDEM OLQ project managers and Science Services Branch staff).
- B. Approve many documents such as letters to responsible parties and participants and agreements with responsible parties and participants.
- C. Assist in the resolution of issues that arise relative to a site as needed.

5.6. The IDEM State Cleanup Section Project Manager shall:

- A. Coordinate and implement remediation activities with the responsible party and the consultant.
- B. Receive, evaluate, and provide comments on documents associated with the investigation, remediation, and closure of a site.
- C. Prepare correspondence to the responsible party and consultant that communicates the status of the remediation project.
- D. Request technical staff review of remediation documents and incorporate the technical staff suggestions and comments into the correspondence to the responsible party and the consultant.
- E. Conduct internal team meetings with technical staff to discuss the site.
- F. Conduct meetings with the responsible party or the consultant to discuss approaches to the remediation or closure of a site.
- G. Make decisions on the appropriate use of technology or remediation techniques at the site.
- H. Conduct site visits as requested or necessary to view the nuances of the site.
- I. Evaluate different proposals on their merit.

5.7. The responsible party shall:

- A. Prepare or hire a consultant on their behalf to prepare investigation reports, remediation work plans, and progress reports to present to the State Cleanup Section project manager regarding the characterization and remediation of a site.
- B. Respond to State Cleanup Section project manager in a timely manner to all requests for information.
- C. Provide data, maps, or records to the State Cleanup Section project manager that reflects site conditions.

## 6.0 POLICY

6.1. OLQ's State Cleanup Program (SCP) will provide oversight of the investigation and remediation of sites impacted by the release of hazardous substances and some petroleum releases where there are also releases of hazardous substances.

6.2. The Immediate Removal Program (a subprogram under the SCP), will conduct time critical removal actions when hazardous substance and/or petroleum releases, and certain solid waste materials, are considered an imminent and substantial threat to public health and/or the environment.

6.3. The SCP will issue Notice of Liability and Requests for information letters to potentially responsible parties. A person who is liable as a responsible person under CERCLA is liable in the same manner, and to the same extent, to IDEM, including the identified exceptions to liability.

6.4. The responsible party, or consultant working on its behalf, will prepare and submit work plans, conduct investigations, perform interim measures and remediation (if unacceptable risk exists), and submit documentation of investigatory and/or remediation activities to the SCP.

6.5. The SCP may issue a Notice and Order of the Commissioner, pursuant to [IC 13-25-4-9\(b\)](#), to a responsible party who has failed to reply adequately to IDEM's Notice of Liability letter. The SCP may also seek a court order to compel a responsible party to undertake investigation or remediation; to enter upon private or public property to carry out an appropriate response; or, to recover costs and damages from a responsible person.

6.6. SCP staff will review environmental investigation, remediation, and closure documentation; conduct site visits; attend meetings; coordinate technical reviews by OLQ science service staff; and coordinate legal review and support by IDEM Office of Legal Counsel.

6.7. The responsible party will reimburse IDEM for the costs IDEM incurs in overseeing response actions taken at SCP sites.

6.8. The SCP will issue a No Further Action (NFA) letter to approve closure upon successful completion of site investigation and implementation of the site remediation work plan, including post-remedial monitoring and confirmation sampling, and implementation of any necessary institutional controls.



6.9. The State Cleanup Program Guide (Effective NPD website) provides additional detail.

## 7.0 REFERENCES

### 7.1. Federal Laws or Rules:

- A. Section 107(a) of 42 U.S.C. 9607(a) Defines liability under the Compensation, and Liability Act of 1980 (CERCLA)
- B. 40 CFR Parts 300-399 National Contingency Plan

### 7.2. Indiana Statutes:

- A. [IC 4-21.5](#) State Offices and Administration, Administrative Orders and Procedures
- B. [IC 13-12-3-2](#) Environment, General Provisions, Environmental Policy, Remediation and closure goals, objectives, and standards for certain remediation projects
- C. [IC 13-14-2-9](#) Outlines modifications of restrictive covenants procedures
- D. [IC 13-14-10](#) Environment, Powers and Duties of Department of Environmental management and Boards, General Emergency Procedures
- E. [IC 13-20-13-13](#) Environment, Solid Waste Management, Regulation of Waste Tire Storage Sites; Waste Tire Management Fund, Removal and remedial actions
- F. [IC 13-20-13-14](#) Environment, Solid Waste Management, Regulation of Waste Tire Storage Sites; Waste Tire Management Fund, Recovery of costs and damages
- G. [IC 13-23](#) Environment, Underground Storage Tanks
- H. [IC 13-24-1](#) Environment, Petroleum, Petroleum Releases
- I. [IC 13-25-4](#) Environment, Hazardous Substances, Hazardous Substances Response Trust Fund
- J. [IC 13-25-5-8.5\(c\)](#) Environment, Hazardous Substances, Voluntary Remediation of Hazardous Substances and Petroleum, Voluntary remediation work plan objectives; additional action to protect human health and the environment not necessary under certain circumstances; risk-based remediation objectives and proposals

### 7.3. Indiana Administrative Codes:

- A. [329 IAC 7.1](#) Priority Ranking System for Hazardous Substances Response Sites

### 7.4. Agency Policies:

- A. Waste-0046-R2 Risk-based Closure Guide
- B. Waste-0065 Procedures for Gaining Access to Third Party Properties by Responsible Parties Performing Remediation
- C. Waste-0070 Community Involvement Plan

## 8.0 SIGNATURES

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Brian C. Rockensuess, Commissioner  
Indiana Department of Environmental Management

\_\_\_\_\_  
Date

\_\_\_\_\_  
Peggy Dorsey, Assistant Commissioner  
Office of Land Quality

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nancy King, Assistant Commissioner  
Office of Legal Counsel and Criminal Investigations

\_\_\_\_\_  
Date

This policy is consistent with Agency requirements.

\_\_\_\_\_  
Quality Assurance Program, Office of Program Support  
Indiana Department of Environmental Management

\_\_\_\_\_  
Date

*Posted: 01/04/2023 by Legislative Services Agency*  
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